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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

10 SHAKEY'S PIZZA ASIA
11 VENTURES, INC, a Philippines
corporation,

12 Plaintiff,

13 v.

14 PCJV USA, LLC, a Delaware limited
liability company; PCI TRADING
15 , LLC, a Delaware limited liability
company; GUY KOREN, an individual;
16 POTATO CORNER LA GROUP, LLC,
a California limited liability company;
17 NKM CAPITAL GROUP, LLC, a
California limited liability company; J
18 & K AMERICANA, LLC, a California
limited liability company; J&K
19 LAKEWOOD, LLC, a California
limited liability company; J&K
20 VALLEY FAIR, LLC, a California
limited liability company; J & K
21 ONTARIO, LLC, a California limited
liability company; HLK MILPITAS,
22 LLC, a California, limited liability
company; GK CERRITOS, LLC, a
23 California, limited liability company;
J&K PC TRUCKS, LLC, a California
24 limited liability company; and GK
CAPITAL GROUP, LLC, a California
25 limited liability company,

26 Defendants.
27
28

Case No. 2:24-cv-04546-SB(AGRx)

Hon. Stanley Blumenfeld, Jr.

**PLAINTIFF SHAKEY'S PIZZA
ASIA VENTURES, INC.'S
OPPOSITION TO DEFENDANTS'
EX PARTE APPLICATION TO
STRIKE OR CONTINUE HEARING
ON PLAINTIFF'S MOTION FOR
OSC RE: CONTEMPT (DOC. NO.
87)**

*[Filed concurrently with Declaration of
Michael D. Murphy]*

Action Filed: May 31, 2024

Trial Date: August 4, 2025

ERVIN COHEN & JESSUP_{LLP}

1 Out of respect for the Court’s resources, Plaintiff Shakey’s Pizza Asia
2 Ventures, Inc. (“SPAVI”) addresses only specific allegations made in Defendants
3 PCJV USA, LLC and Guy Koren’s (collectively, “Defendants”) latest *ex parte*
4 application – its fourth overall and third in the past month alone – which amounts to
5 a generalized, knee-jerk complaint about the timing of SPAVI’s Motion for Order to
6 Show Cause Re: Civil Contempt (the “Contempt Motion”) (Dkt. 87) filed just *three*
7 *hours* before Defendants rushed to file the application. In sum, putting aside the
8 obvious failure to establish any exigency warranting *ex parte* relief, Defendants did
9 not provide sufficient *ex parte* notice and, even if they did, their application is not
10 only baseless, but also premised upon accusations that contradict the record.

11 • First, Defendants’ grievances about the hearing date for the Contempt
12 Motion are unfounded and, frankly, puzzling. After substantial meeting and
13 conferring, SPAVI in good faith agreed to set a later hearing date for the Contempt
14 Motion – January 24, 2025, rather than weeks earlier as initially sought – to be
15 heard concurrently with Defendants’ pending Motion to Dismiss (Dkt. 85) as an
16 accommodation to various conflicts raised by Defendants’ counsel, *who expressly*
17 *agreed to that hearing date*.¹ (See Dkt. 88-5 (Declaration of Arash Beral, Ex. D) at
18 2-3 (“In the interest of judicial economy, and as another accommodation to the
19 scheduling issues raised by your firm, SPAVI will agree to set a hearing date of
20 January 24”).) The Contempt Motion is *indisputably timely* according to that hearing
21 date and, in fact, was served with an additional day of notice. Although Defendants
22 now inexplicably claim that they “expected” SPAVI to file the Contempt Motion on
23 December 20, 2024, they do not cite any rule, authority, or evidence supporting that
24

25 _____
26 ¹ The various travel plans and health concerns raised in the Declaration of Arash
27 Beral were *never* raised during the parties’ meeting and conferring. (Dkt. 88-1 ¶ 13.)
28 To the contrary, the email correspondence shows that Defendants’ counsel
themselves agreed to set a later hearing date of January 24, 2025 based simply on
other conflicting briefing deadlines in this action. (Dkt. 88-5 at 4.)

1 “expectation,” whatever that may mean.²

2 More fundamentally, it is imperative that the Contempt Motion be heard as
3 soon as practicable. Without belaboring the record here, the evidence submitted in
4 support of the Contempt Motion demonstrates that Defendants’ wholesale non-
5 compliance with this Court’s preliminary injunction, as well as the irreparable harm
6 that Defendants continue to inflict on SPAVI, must immediately be addressed
7 through, at a minimum, a hearing on an Order to Show Cause Re: Civil Contempt.
8 For that reason, even setting the later hearing date of January 24, 2025 was a
9 concession that, again, SPAVI agreed upon to accommodate Defendants. If any
10 party is violating that agreement, it is Defendants’ counsel, who agreed to have the
11 Motion to Dismiss heard on the same date as the Contempt Motion.³

12 • Second, Defendants’ claim that SPAVI “held” onto the Contempt
13 Motion only to “drop” it on their laps during the holidays is especially egregious
14 given that, the day after filing the application – beginning *just twelve hours later* –
15 Defendants filed both (1) an “Emergency Motion for Stay of District Court Case, or
16 in the Alternative, Stay of Enforcement” in the U.S. Supreme Court; and (2) a
17 “Motion to Increase Bond Securing Preliminary Injunction or, in the Alternative, to
18 Remand for Bond Hearing” in the Ninth Circuit Court of Appeals. The “emergency”
19 motion in the U.S. Supreme Court appeals the Ninth Circuit’s denial of a stay on
20 December 3, 2024 (Dkt. 77), while the motion in the Ninth Circuit arises from this
21 Court’s denial of Defendants’ request to modify the bond amount on December 4,
22

23 ² Defendants filed their pending Motion to Dismiss on December 20, 2024 because
24 that was their responsive pleading deadline, which had already been extended by
25 stipulation. Curiously, even if SPAVI also filed the Contempt Motion on December
26 20, 2024 as Defendants had “expected,” their opposition would still be due on
January 3, 2025, placing Defendants in the exact same position that they are in now.

27 ³ The application declines to ask that the hearing on the Motion to Dismiss be
28 moved as well, indicating that Defendants are using this manufactured controversy
for a strategic purpose: to have their motion heard first.

1 2024 (Dkt. 80). While the application complains about non-existent “sandbagging”
2 by SPAVI, Defendants have yet to explain why they waited more than three weeks –
3 until a Friday between Christmas and New Year’s Day – to file these motions.

4 Importantly, Defendants are well aware that SPAVI was already in the midst
5 of preparing oppositions to Defendants’ instant application, the Motion to Dismiss
6 (due January 3, 2025), and the appeal to the Ninth Circuit (due January 17, 2025), in
7 addition to, now, their “emergency” motion with the U.S. Supreme Court and newer
8 motion with the Ninth Circuit, which are suddenly due in the coming days.⁴ Put
9 otherwise, at the same time Defendants appeared *ex parte* to complain about having
10 to prepare one opposition to a timely noticed motion during the holidays, they have
11 forced SPAVI to file five oppositions during the same time period. To be sure, in the
12 interest of professionalism and out of respect for all three federal courts, SPAVI
13 intends on responding to each motion in due course without requesting “emergency”
14 relief. SPAVI is dismayed that Defendants seems intent on pursuing a different tact.

15 • Third, Defendants failed to satisfy Local Rule 7-19.1’s requirement of
16 advising SPAVI of the “substance” of the proposed application. The notice provided
17 by Defendants identified only the relief they seek – to “strike” the Contempt Motion
18 or continue the hearing date. (Declaration of Michael D. Murphy (“Murphy Decl.”),
19 Ex. A.) Missing was any explanation as to the substance of their request. (*Id.*)
20 Defendants provided no explanation of the grounds for the relief sought or the
21 authorities on which it is based; the information typically found in a notice of intent
22 to seek an order. (*Id.*) Rather than respond to SPAVI’s request for an explanation,
23 Defendants filed the application within an hour. (Dkt. 88.) The Application was thus
24 not filed pursuant to sufficient or proper notice under the Local Rules.

25 • Fourth, Defendants’ evidentiary support is riddled with inadmissible
26

27 ⁴ SPAVI, of course, has just recently opposed Defendants’ two prior *ex parte*
28 applications and one “emergency motion” in the Ninth Circuit, all of which were
summarily denied in the past month and a half.

1 opinions, speculation, and irrelevant personal attacks designed to prejudice this
2 Court. SPAVI will not ask this Court to waste judicial resources on evidentiary
3 objections, knowing that it may later challenge this same inadmissible evidence if
4 raised in a subsequent motion. By way of example, however, in Paragraph 7 of the
5 Declaration of Arash Beral (Dkt. 88-1), he speculates as to the “desire” of SPAVI’s
6 counsel to meet and confer in good faith during a teleconference on December 13,
7 2024 (one of multiple attempts by SPAVI to meet and confer on the relief sought).
8 In that same paragraph, Mr. Beral smears SPAVI’s counsel by testifying that
9 counsel admitted they had no evidence of “good faith” for their Contempt Motion,
10 which is not only false, but also not the standard applied in contempt proceedings.
11 (*Id.* ¶ 5.) Later in that paragraph. Mr. Beral attempts to prejudice this Court against
12 SPAVI by testifying, falsely again, that SPAVI’s counsel stated that SPAVI
13 “doesn’t understand how things work in the United States” – a statement that was
14 never made and is, indeed, the opposite of the truth. (*Id.*) Regardless, none of this
15 has anything to do with the hearing date, but instead it is part of a strategy to attack
16 the character of counsel, rather than defend the merits of their case. (*Id.*)

17 • Fifth, the application’s complaints about the adequacy of SPAVI’s
18 meet and confer efforts in advance of the Contempt Motion are, at most, arguments
19 to raise in an Opposition, not in an *ex parte* application filed just three hours after
20 receiving the Contempt Motion. In any event, as explained in detail in the Contempt
21 Motion itself, despite Defendants’ attempts to reinterpret this Court’s preliminary
22 injunction (Dkt. 56), SPAVI met and conferred with Defendants in various
23 correspondence and teleconferences spanning over one month before filing the
24 Motion. (*See* Dkt. 87-1 ¶¶ 7-14, Exs. C-F.) Ultimately, SPAVI filed the Contempt
25 Motion after it was clear that Defendants had a fundamental, irreconcilable
26 disagreement about their non-compliance with the preliminary injunction. (*Id.*)

27 • Sixth, the fact that Defendants spent valuable time on yet another *ex*
28 *parte* application contravenes their claim that they are now suddenly unable to

1 effectively oppose the Contempt Motion with a hearing date that they themselves
2 agreed to. However, even if that claim were true, Defendants will have not only
3 more than the statutorily required time to oppose the Contempt Motion, but also
4 additional time to respond to SPAVI's request for an order of contempt at the
5 requested hearing on an Order to Show Cause, meaning they will have more than
6 ample opportunity to advance their defenses to their non-compliance, if any.

7 In the end, particularly given the host of unfounded, hostile accusations made
8 in the application – all without a showing of any exigency – SPAVI insists that its
9 timely filed Contempt Motion remain on the docket as noticed without striking it, as
10 Defendants insist, and be heard on the hearing date that Defendants agreed to
11 (January 24, 2025). To the extent that this Court is inclined to continue that hearing
12 date, notwithstanding the absence of any *ex parte* notice for that relief, SPAVI
13 respectfully requests that it also continue the hearing date on Defendants' pending
14 Motion to Dismiss (Dkt. 85) so that it remains heard on the same date.

15
16 DATED: December 27, 2024

ERVIN COHEN & JESSUP LLP

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19 By: 

20 Michael D. Murphy
21 Attorneys for Plaintiff SHAKEY'S PIZZA
22 ASIA VENTURES, INC.
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CERTIFICATE OF SERVICE

The undersigned certifies that, on December 27, 2024, the foregoing document was electronically filed with the Clerk of the Court for the United States District Court, Central District of California, using the Court's ECF filing system. I further certify that all counsel for all parties to this action are registered CM/ECF user and that service will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: December 27, 2024

By: /s/ Kenneth P. Hsu

Kenneth P. Hsu

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